IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4772 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

RAMESHKUMAR SUMERSINGH BAROLIA

Versus

COMMANDANT SRP

Appearance:

MR IS SUPEHIA for Petitioner

MR L.R.PUJARI, learned A.G.P.for Respondents

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 10/02/99

ORAL JUDGEMENT

1. The petitioner was working as a Constable in the State Reserve Police Force. He was subjected to charge-sheet dt.25.2.88 on the allegations that he had proceeded on sick leave on 3.9.84 and returned after 485 days from his native place without informing anybody about his sickness, that he resumed his duties after issuance of four notices and remained absent from duty for 485 days without informing his superiors and that

from 17.4.86 he deserted the duties without informing his superiors and returned to duty on 29.8.87. The Inquiry Officer was appointed to hold an inquiry against the petitioner. On 17.3.88 the petitioner's statement was recorded and the copy of this statement, which has been placed on record as Annexure 'B' (page 23 with the Special Civil Application), shows that he had received the charge-sheet and had also read and understood the same and while answering Question No.3 he categorically admitted the charges and while admitting the charges he had stated that he had committed the mistake. This statement also shows that while answering question No.4 he sought to explain that while he was discharging his duties in the year 1983 at Ukai Thermal Power, a tribal person, who was doing the business of liquor, was raided and this person had administered some such drink to him by which he became unconscious. He got the treatment from some Tantrik but to no avail and, therefore, he was sent to his native place by his Company Commandant alongwith two Constables. There also he was subjected to some treatment and came back on duty after he felt little better and that this was also known to his Company Commandant and other Jawans of the Company. That in these circumstances, the mistake was committed by him and in future he will not commit any such mistake. Whereas the charges were categorically admitted by the petitioner, while the Inquiry Officer held charge No.1 to be proved and taking note of the oral explanation as was rendered by the petitioner in answer to question No.4 in his statement, to which reference has been made hereinabove, and also taking note of the fact that he was a member of backward class, the Inquiry Officer recommended that a lenient view may be taken and also mentioned that he was desirous of a personal hearing. The Inquiry Officer has also mentioned about the statements of six witnesses, who are Head Constables and Police Sub Inspectors. The Commandant after considering the report of the Inquiry Officer, issued a show cause notice as to why he should not be subjected to the punishment of penalty of deduction of basic salary of one month i.e. Rs.855/-. In this show cause notice it is also mentioned that he may file the reply and if he wants a personal hearing he may mention so in his reply and be present personally alongwith the reply. The Commandant then passed the order dated 4-7/8-88 imposing the penalty of Rs.855/- i.e. the basic pay of one month as was proposed and it is also mentioned in this order that though the petitioner had received the show cause notice on 27.6.88 he had neither filed any reply nor had he come for the personal hearing. This order dated 4-7/8-88 is placed on record as Annexure 'E'. The petitioner did not

challenge this order, but it appears that from the Office of Khas Mukhya Police Adhikari a letter dt.24.1.91 was sent to the petitioner under the signatures of Nayab Mukhia Police Adhikari in the form of a show cause notice for enhancement of the punishment and stating therein that why the order passed by the Commandant dt.4.8.88 may not be set aside and why he should not be removed from the service. This show cause notice for enhancement of the punishment issued on 24.1.91 was received by the petitioner on 1.2.91 to which he filed a reply on 26.2.91 and he also appeared for personal hearing on 20.3.91. He filed a further reply on 21.3.91. Having considered the petitioner's version and the replies filed by him, the Nayab Mukhya Police Adhikari passed an order on 18.6.91 holding the charges to be proved and imposing the penalty of removal from service. Against this order dt.18.6.91 the petitioner preferred a Revision before the Home Department of the Government of Gujarat and the Joint Secretary, Home Department, passed an elaborate order on 16.1.92 after considering the entire record and after dealing with the submissions made by the petitioner and rejected the revision application. Thus, the petitioner stands removed in terms of the order dated 18.6.91.

2. Aggrieved from the removal from service, as aforesaid, on the basis of the order dt.18.6.91 and the order passed by the Home Department on 16.1.92 the petitioner preferred this Special Civil Application on 15.6.92. Rule was issued by this Court on 8.12.92 but no reply has been filed on behalf of the respondents.

3. The learned counsel for the petitioner Mr. Supehia has argued that the petitioner had admitted the charges as a part of plea bargaining because he was given to understand that in case he admits the charges, a lenient punishment shall be imposed against him and, therefore, an inquiry should have been held against him. This contention is far from convincing for the simple reasons that in the statement dt.17.3.88 there is no indication whatsoever about the plea bargaining and in the explanation, which he has given in answer to question No.4 in this very statement, also he has not given any indication about such a plea bargaining and the explanation, which he has given in answer to question No.4, also relates back to the year 1983 whereas the charges against the petitioner relate to September 1984, 1986 and 1987. Besides the fact that there is no contemporaneous evidence on record to show with regard to plea bargaining, the more important fact is that he did not care even to file the reply to the show cause notice dt.18/20-6-88, as had been given to him by the

Commandant. In absence of any contemporaneous evidence in support of the plea of bargaining and the oral and bald explanation given in answer to question No.4, the contention raised by the learned counsel for the petitioner in this regard cannot be accepted and merely because the petitioner has come out with the plea of bargaining or the explanation, this Court does not find any material on record to accept the same. There was a categorical and unconditional admission of the charges and guilt before the Inquiry Officer himself in the course of inquiry while answering straight questions and, therefore, there is no justification to raise the contention that the petitioner should have still been called upon by the Inquiry Officer to lead evidence in his defence in the inquiry.

4. The members of the Police Force are governed by the Bombay State Reserve Police Force Act, 1951 and the Bombay State Reserve Police Force Rules, 1959. The learned counsel for the petitioner made reference to S.7 of the Bombay State Police Force Act, 1951 and submitted that the members of the service of the State Reserve Police Force may be dealt with under the Bombay Police (Punishments and Appeals) Rules, 1956 only if they are transferred to the Police Force as such and vice versa. He has also submitted that so far as the members of the service of the Bombay State Reserve Police Force are concerned, there is no provision under the Rule according to which the punishment imposed by the Disciplinary Authority can be enhanced. This argument raised on behalf of the petitioner has no basis for the simple reason that under the Bombay State Reserve Police Force Rules, 1959, Rule 47 under Chapter VIII deals with the matters relating to discipline and sub rule (4) of Rule 47 clearly provides that if it is decided to deal with the alleged offender departmentally, the procedure followed in dealing with officers of the State Police Force shall be followed and the Commandant shall be deemed to be a District Superintendent of Police for the purpose of awarding departmental punishment. S.7 of the Bombay State Reserve Police Force Act, 1951, to which the reference has been made by the learned counsel for the petitioner and Rule 47(4) under Chapter VIII - Discipline of the Bombay State Reserve Police Force Rules, 1959 are reproduced as under for ready reference:-

S.7 of the Bombay Police State Reserve Police Force Act, 1951:

"7. Transfer.- (1) Notwithstanding anything contained in this Act or the Bombay Police Act, 1951, (Bom.XXII of 1951), it shall be competent to the State

Government to transfer members of the Police Force appointed under the Bombay Act, 1951, (Bom.XXII of 1951), to the State Reserve Police Force established under this Act and vice versa;

Provided that the State Government may delegate its power under sub-section (1) in so far as it relates to the transfer of members of the subordinate ranks of the respective Police Force to the Inspector General.

(2) On the transfer of a member of the Police Force appointed under the Bombay Police Act, 1951, (Bom.XXII of 1951), to the State Reserve Police Force established under this Act or vice versa, he shall be deemed to be a member of the Police Force to which he is transferred and in the performance of his functions, he shall subject to such orders as the State Government may make, be deemed to be vested with the powers and privileges, and be subject to the liabilities, of a member of such grade in the Police Force to which he has been transferred as may be specified in the orders."

Rule 47(4) of the Bombay State Reserve Police Force Rules, 1959:

"47(1) When a Reserve Police Officer is reported to have committed an offence described under sections 14 and 15 of the Act, the Commandant on receipt of a report regarding the facts of the incident shall decide whether the accused should be proceeded against in a court of law or should be dealt with departmentally.

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(4) If it is decided to deal with the alleged offender departmentally, the procedure followed in dealing with officers of the State Police Force shall be followed and the Commandant shall be deemed to be a District Superintendent of Police for the purpose of awarding departmental punishment."

5. A conjoint reading of the aforesaid provisions make it abundantly clear that when a member of the State Reserve Police Force is to be subjected to a departmental disciplinary action, the procedure to be followed is the same as is required to be followed for the Officers of the State Police Force. The members of the State Police Force are governed by the Bombay Police Act, 1951 and the Bombay Police (Punishments and Appeals) Rules, 1956 framed under the relevant provisions of the Bombay Police Act. S.27A of the Bombay Police Act is reproduced as under:-

"27-A. Revisional powers of State Government,

Inspector General and Deputy Inspector General.- The State Government, the Inspector General or a Deputy Inspector General may, suo motu or on an application made to him within the prescribed period in this behalf, call for and examine the record of any inquiry or proceeding of any subordinate police officer under this Chapter, for the purpose of satisfying itself or himself, as the case may be, as to the legality or propriety of any decision or order passed by, and as to the regularity of the proceeding of such officer, and may, at any time-

(a) confirm, modify or reverse any such order;
(b) impose any penalty or set aside, reduce, confirm or enhance the penalty imposed by such order,
(c) direct that further inquiry may be held, or
(d) make such other order as, in the circumstances of the case, it or he may deem fit;

Provided that an order in revision imposing or enhancing penalty shall not be passed unless the police officer affected thereby has been given a reasonable opportunity of being heard:

Provided further that no order in revision shall be passed:
(i) in a case where an appeal against the decision or order passed in such inquiry or proceeding has been filed, when such appeal is pending;

(ii) in a case where an appeal against such decision or order has not been filed, before the expiry of the period provided for filing such appeal; and

(iii) in any case after the expiry of a period of three years from the date of the decision or order sought to be revised."

According to these provisions, the State Government, the Inspector General or a Deputy Inspector General may suo motu call for and examine the record of any inquiry or proceeding of any subordinate police officer under this Chapter for the purpose of satisfying itself or himself as the case may be, as to the legality or propriety of any decision or order passed by, and as to the regularity of proceeding of such officer. Under clause (iii) of proviso in such a case no order can be passed after the expiry of a period of three years from the date of the decision or order sought to be revised. It is very clear from the facts of this case that the petitioner herein did not challenge the order, which was passed against him by the Commandant imposing fine of the

deduction of one month's pay, which is a penalty prescribed under Rule 3(2)(iv) of the Bombay Police (Punishments & Appeals) Rules, 1956. This provision clearly cloths the Deputy Inspector General to initiate the action within a period of three years and after the expiry of the period prescribed for filing the Appeal in cases where the Appeal has not been filed. The period for filing the Appeal in the instant case was two months as prescribed under Rule 11 of the Bombay Police (Punishments & Appeals) Rules, 1956. This two months period from the date of the Commandant's order dated 4-7/8-88 had in any case expired in October 1988 and the notice for enhancement of the punishment had been issued by the Nayab Mukhia Police Adhikari from the office of the Khas Mukhya Police Adhikari on 24.1.91 i.e. before the expiry of three years period from the date of the Commandant's order and, therefore, the action for enhancement of the punishment is found to have been initiated within the time limit prescribed under S.27-A of the Bombay Police Act and on that ground the order cannot be set aside.

6. Yet another argument of the learned counsel for the petitioner is that the Nayab Mukhia Police Adhikari could not have passed this order and that it should have been passed by the Khas Mukhya Police Adhikari. This argument is wholly misconceived because it is very clear from the reading of the Rule 47(4) of the Bombay State Reserve Police Force Rules 1959, as has been reproduced in the earlier part of this order, that the Commandant shall be deemed to be a District Superintendent of Police for the purpose of awarding departmental punishment. If the Commandant is equated with District Superintendent of Police, the next higher authority is Deputy Inspector General of Police in the State Police Force and the Deputy Inspector General of Police of the State Police Force is at par with the Nayab Khas Mukhya Police Adhikari i.e. Dy. Special Inspector General of Police in the State Reserve Police Force and, therefore, if the action was initiated by the office of the Special Inspector General of Police under the signatures of the Deputy Special Inspector General of Police or for that purpose the Chief Police Officer i.e. Special Inspector General of Police or the Deputy Special Inspector General of Police, no exception can be taken and the same is permissible in accordance with Rule 47(4) of the Bombay State Reserve Police Force Rules, 1959 read with S.27A of the Bombay Police Act and this argument raised on behalf of the learned counsel for the petitioner also fails.

7. Learned counsel for the petitioner then submitted

that while passing the order of punishment, the authorities have also taken into consideration his past record without any notice to him and, therefore, he has been subjected to great prejudice and in view of the law laid down by the Supreme Court in the case of State of Mysore v. K. Manche Gowda, reported in AIR 1964 SC 506 the punishment order cannot be sustained. In K.Manche Gowda's case (Supra) the proposed punishment was based on previous record of the Government servant and the Supreme Court has taken the view that if the previous record is disclosed in the second show cause notice, the previous record could be taken into consideration even though it is not a subject matter of the charge at first stage. According to the learned counsel for the petitioner, it therefore, follows that the undisclosed previous record cannot be taken into consideration. However, I do not find that in the instant case any previous record had been taken into consideration for the purpose of imposing punishment. Merely because in the body of the order of punishment of removal from service, it has been stated that the service book had been looked into, that does not mean that any previous record has been taken into consideration against him for the purpose of inflicting punishment. On the contrary, it appears from the reading of the order of removal from service that when the petitioner appeared for personal hearing on 20.3.91 before the concerned authority, it was on his request that further time was given for filing the additional reply and it was on his request that the service book was also considered. It appears that the petitioner wanted to make out a case before the authority that his previous service record was without any blemishes and, therefore, he wanted this to be considered as a mitigating circumstance in his favour for not enhancing the punishment. In order to consider this plea of the petitioner, if the authority had gone into the service book to verify as to whether the petitioner's version was correct or not, it cannot be said that any previous adverse record, which was not disclosed, has been taken into consideration. The law laid down in K.Manche Gowda's case (Supra) is, therefore, of no avail to the petitioner.

8. So far as the petitioner's argument regarding the quantum of punishment is concerned, it has been submitted that the only allegation against the petitioner is that he remained absent and, therefore, the punishment of removal from service in the facts and circumstances of this case is highly excessive and disproportionate to the element of misconduct. I am afraid such a contention on the question of quantum of punishment with regard to the

members of the services of a Reserved Police Force cannot be sustained. These are the services relating to the security and from such service, if a member of the service deserts the Force and remains absent for a long period of 485 days without informing the authority and fails to furnish any plausible explanation worth acceptance and the concerned authorities of the department have taken note of all the circumstances in entirety and they found that it is a fit case for punishment of removal, it is not at all a case worth interference on the question of quantum of punishment by this Court, more particularly when it has been categorically mentioned in the order passed by the Home Department in the revision preferred by the petitioner that as right and duty are the two facets of the same coin, loyalty and expectation from a member of the State Reserve Police Force are also two facets of the same coin and it has also been mentioned that in case a lenient view, as claimed by the petitioner, is taken in such cases, it will sent a wrong message to the other members of the Reserved Police Force and it would encourage indisciplined conduct amongst other members of the Force. In the facts and circumstances of this case, I, therefore, do not find that it is a fit case for this Court to interfere with the question of quantum of punishment.

9. Even otherwise, the order of removal, as has been passed by the Nayab Mukhia Police Adhikari, and the further order, which has been passed by the Home Department in the Revision, are elaborate orders in which all the submissions raised by the petitioner have been considered and it has been found that the same do not suffer from any infirmity, factual or legal so as to warrant any interference by this Court in this writ of certiorari.

10. The upshot of the aforesaid adjudication is that there is no force in this Special Civil Application. The same is hereby dismissed. Rule is hereby discharged. No order as to costs.

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